IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH NOVEMBER 2006 / 17TH KARTHIKA 1928

OP.No. 20037 of 2002(I)

PETITIONER:

M/S.ASIANET SATELLITE COMMUNICATIONS (P)
LTD., 3RD FLOOR, KARIMPANAL ARCADE, EAST FORT,
THIRUVANANTHAPURAM-695 023, REPRESENTED BY
RAJ KUMAR.C., COMPANY SECRETARY

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS:
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1. THE ADDITONAL SALES TAX OFFICER-I,
1ST CIRCLE, PEROORKADA, THIRUVANANTHAPURAM

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY G.P. SRI.GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.34387/2002 IN O.P. NO.20037/2002

DISMISSED:

8.11.2006 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

P1: TRUE COPY OF PENALTY ORDER FOR THE YEAR 1993-94 DT.14.9.2000 OF R1.

P2: .DO. 1994-95 .DO.

P3: .DO. 1995-96 .DO.

P4: .DO. 1996-97 .DO.

P5: TRUE COPY OF REVISION ORDER (COMMON ORDER) DT.3.1.2001 FOR THE YEAR 1993-94 TO 1996-97 OF DY. COMMISSIONER, COMMERCIAL TAXES, TVM.

P6: TRUE COPY OF GROUNDS OF REVISION FILED BY THE PETITIENR FOR THE YEAR 1993-94 DT.17.1.2001.

P7: TRUE COPY OF COMMON REVISION ORDER DT.21.1.2002 OF R2.

P8: TRUE COPY OF PROCEEDINGS DT.12.2.2001 OF R1.

TRUE COPY

P.S. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.20037 of 2002

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Dated this the 8th day of November, 2006.

JUDGMENT

The petitioner is challenging revisional order issued by the Commissioner of Commercial Taxes confirming penalty levied under Section 10A of the Central Sales Tax Act, 1956 (hereinafter called "the Act") for the offence committed by the petitioner under Section 10(d) of the Act for the assessment years 1993-94 to 1996-97. The facts leading to the case are as follows. The petitioner which is a reputed company engaged in telecast of TV programmes and cable networking issued C Forms for the above four years and availed concessional rate of sales tax on interstate purchase of Dish Antenna, Battery, Digitiser etc. which are used in their cable TV network for transmitting TV signals to customers. The Assessing Officer found that the items purchased were neither used for manufacture of any goods nor for generation of power or for resale and therefore there was misuse of C Form leading to loss of revenue. Since the action of the petitioner amounts to violation of Section 10(d) of the Act, he proposed to impose a penalty under Section 10A in lieu of prosecution. The petitioner filed objections stating that the items purchased are used for transmitting TV signals which amounts to distribution of power and so much so, there is no violation of Section 8(3)(b) of the Act to attract penalty. Alternately it was contended that no penalty could be

levied because C forms were not issued deliberately to evade payment of tax. The Assessing Officer overruled the objections holding that the petitioner declared in the application for registration that the items purchased were for "resale" and by using the items by the petitioner for their own networking, they have violated Section 10(d) of the Act that attracts prosecution in lieu of which penalty is leviable under Section 10A of the Act. Accordingly he levied penalty at one and a half times the differential tax. Since the supplier has charged tax at 4% against C forms issued by the petitioner, penalty levied was one and a half times of 6% i.e.9% of the value of goods. Since the revision petitions filed before the first revisional authority were unsuccessful, second revisions were filed which were dismissed by common order of the Commissioner produced as Ext.P7.

2. I heard Senior counsel Dr.Mohamedkutty appearing for the petitioner and Government Pleader for the respondents. Counsel for the petitioner pointed out the amendment to Section 8(3)(b) introduced by Act 20 of 2002 whereunder telecommunication network is included as item eligible for issue of C Form. However, since amendment is made only in 2002, it does not apply for the assessment years 1993-94 to 1996-7 for which penalty is levied. Moreover, it is a matter to be seen whether the equipments purchased by the petitioner answers the description of telecommunications network. In any case since amendment does not apply to the relevant years, I do not go into the question whether petitioner is entitled to issue C Form for the purchase of some equipments after the above

amendment has come into force.

3. The next contention raised is that the equipments used for sending television signals through cables is in the form of distribution of "another form of power". The electronic TV signals cannot be equated to a form of power and therefore, I am unable to accept petitioner's contention that the use of C Form is for an eligible purpose. Besides, the Assessing Officer has pointed out that petitioner had declared in the application for registration that the items for which C Forms claimed were for "resale" which admittedly petitioner has not made. Therefore, the petitioner's claim that petitioner is entitled to issue C Form is unacceptable and violation is rightly found against the petitioner.

4. Counsel contended that the authorities below went wrong in levying maximum penalty of one and a half times of the tax involved. According to counsel, the petitioner's operations were made known to the Assessing Officer and while issuing C Forms he was well aware of the fact that the petitioner is not engaged in trading of the commodities for which C Forms were claimed. He pointed out that in the monthly return filed also petitioner has not declared any turnover on sale of these equipments. Therefore, the fact that items purchased were not for resale was clear on records and the Assessing Officer was well aware of use of C Forms by the petitioner for the purchase of equipments. Moreover, the grievance of the petitioner is that the officer did not issue any notice intimating the violation or proposed penalty until notice was issued in the year 2000. The

contention therefore is that the C Forms were not deliberately issued to avoid or evade payment of sales tax, but petitioner issued it on the bonafide impression that they were entitled to concessional rate of tax under Section 8(3)(b) of the Act. Relying on decision of the Supreme Court in HINDUSTAN STEEL LTD. V. THE STATE OF ORISSA (1970) 25 STC 211 counsel submitted that levy of maximum penalty is not warranted as the violation is only technical. Another decision cited by counsel for the petitioner is that of this court in PALGHAT DISTRICT CO-OPERATIVE RUBBER MARKETING SOCIETY V. ASST. COMMISSIONER (1994) KLT (Tax Cases) 58 whereunder this court held that mens rea is required for imposing penalty under Section 10A of the Act. Government Pleader on the other hand contended that even if mens rea is required, the same is satisfied because petitioner by declaring that the items purchased are for resale, did not in fact sell the goods but used the items as capital equipments for their business in TV network. The findings of the officer is also to the effect that petitioner had declared the items in the certificate of registration applied for by them as "for resale". Counsel for the petitioner submitted that nature of business was declared in the certificate of registration as distribution and therefore, the contents of the application should be read as a whole and so much so, there is no misrepresentation in the application is his contention. The application for registration namely, Form A prescribed under Rule 3 of the CST (R&T) Rules specifically requires dealer to mention the various purpose for which goods are

purchased which include all the eligible activities for which C Forms are to be issued as contemplated under Section 8(3)(b) of the Act, namely, for resale, for manufacture and processing of goods for sale, for use in mining, in the generation and distribution of electricity or any other form of power etc. When petitioner makes a declaration in the application for registration that items are for resale, the same is incorporated in the certificate of registration. If petitioner wants to change the purpose of the goods, it was the duty of the petitioner to get the certificate of registration amended which is not done in this case. Therefore, I am of the view that there is violation of Section 10(d) of the Act in as much as petitioner has not used the items purchased for the declared purpose i.e. for resale. Therefore, penalty under Section 10A is leviable for the violation under Section 10(d) of the Act. The levy of penalty by the officer which is confirmed by the Commissioner is therefore upheld in principle.

5. The next question raised is whether the penalty levied at 9% of the purchase value is justified. The petitioner admittedly purchased the articles by paying tax at 4% against issue of C Forms. Therefore, the loss of revenue is 6% of the purchase value. The maximum penalty is one and a half times of the tax sought to be evaded by misuse of C Form which is 9%. Even though counsel contended that the appropriate State which lost the revenue is the State of Punjab wherefrom goods were purchased and therefore, penalty cannot be levied in the State of Kerala, I do not think such a contention is tenable because Section 10A

authorises levy of penalty by the authority who issued certificate of registration to the dealer under the Act. Moreover, central sales tax and penalty are collected on behalf of the Central Government and it is immaterial as to which State collects the same. In the circumstances, the argument that the Assessing Officer who issued certificate of registration to the petitioner cannot levy penalty under Section 10A is repelled. However, I am of the view that if the Assessing Officer had perused the returns, it would have been known to him that petitioner was not acting as a trader in the goods purchased by it. Moreover, in the application for certificate of registration the petitioner's business activity declared is telecasting and networking and not the role of a trader. Moreover, even the declaration of the article as for resale also may not be a deliberate action because the application form contains only two purposes i.e. one for manufacture and processing and the other for resale. In any case when C Forms were issued by the Assessing Officer to the petitioner, he should have ensured that there is no misuse of the same as petitioner's business prima facie does not make them eligible for getting C Forms. Moreover, the officer has not for years verified the use of C Form or monthly returns filed by the petitioner which led to initiation of penalty for 1993-94 to 1996-97 only in the year 2000. Therefore, I feel these mitigating factors do not justify levy of maximum penalty which is levied in this case. Even though counsel for the petitioner contended that mens rea is a necessary ingredient for the levy of penalty, I am unable to accept this contention because the purpose of penalty under Section 10A

in lieu of prosecution is mainly to compensate the State for the loss suffered on account of misuse of C Form. It is to be noted that but for the misuse of C Form, the petitioner would have had to pay tax at 10% as against 4% paid by the petitioner. In fact there is no way for the authorities in the State wherefrom petitioner purchased the goods to find out violations or misuse of Forms and declarations and that is why authority to levy penalty is granted to the assessing authority who issued certificate of registration to the petitioner. In the circumstances and in view of the mitigating factors stated above, I modify the penalty orders for 1993-94 to 1996-97 confirmed by Ext.P7 by reducing the penalty to differential tax i.e. at two third of the actual penalty levied and cancel one third of the penalty levied and sustained for all the four years.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

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